

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

AMERICAN FEDERATION OF TEACHERS,)	
LOCAL UNION NO. 420, AFT-AFL-CIO,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 79-055
)	
ST. LOUIS BOARD OF EDUCATION,)	
)	
Respondent,)	
)	
and)	
)	
ASSOCIATION OF EDUCATION SECRE-)	
TARIES, ST. LOUIS, MISSOURI,)	
)	
Intervenor.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the American Federation of Teachers, Local 420, AFL-CIO, filing a petition for certification as public employee representative of all office clerical employees in class code 00XX employed by the St. Louis Board of Education (Employer). The Employer moved to dismiss the petition, alleging there existed an agreement between the Employer and the Association of Educational Secretaries (Association) which created a contract bar that prohibits the filing of a certification petition during the period of the agreement. On February 29, 1980, a hearing was held in Clayton, Missouri, at which representatives of the Employer, Local 420, and the Association were present. In its opinion of July 10, 1980, the Board ruled that because Local 420 filed a timely second petition the contract bar issue was rendered moot. Accordingly, the Board directed an election to determine Local 420's

representative status. On July 24, 1980, the Employer filed a motion to reconsider the July 10, 1980 decision arguing, inter alia, that Local 420's second petition was not accompanied by a showing of interest dated not more than six months prior to the filing of the petition as required by 40 CSR 2.030 (I). Finding this argument valid, the Board rescinded its July 10th decision. Consequently, the Board must now rule on the contract bar issue brought before the Board on February 29, 1980 hearing.

The case was heard by a panel of three, consisting of Chairman Conrad Berry, employee member Robert Missey, and employer member Stanley Cox. Because of the subsequent death of Mr. Cox, the case was submitted by transcript to employer member Herbert Shaw. The State Board of Mediation is authorized to hear and decide issues as to appropriate bargaining units and majority representative status by virtue of Section 105.525, RSMo 1978.

At the hearing the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

This case involves over 200 clerical workers in class code 00XX employed by the St. Louis Board of Education. At the time of the hearing, said employees were represented by the Association of Educational Secretaries. The Employer's associate superintendent of personnel, responsible for meeting and conferring with employee organizations on behalf of the Employer, met and conferred with the negotiating team of the Association in March and May of 1979. At those meetings the Association put forth proposals concerning wages, life insurance, sick leave and vacation benefits. There was no discussion concerning the recognition of the Association as the exclusive bargaining representative of the secretarial employees, nor was there any talk

concerning grievance procedures or other customary terms and conditions of employment. The results of the discussions concerning wages, life insurance, sick leave and vacation benefits were reduced to writing and presented to the Employer for approval at the July 10, 1979 meeting of the St. Louis Board of Education. Upon approval, the agreement concerning the above matters became effective for the 1979-1980 school year expiring on June 30, 1980.

The petitioner, Local 420, now seeks to represent the clerical employees. Local 420 presently represents other workers employed by the St. Louis Board of Education. The Local is divided into two chapters --- one chapter representing the certificated employees such as teachers, and the other chapter consisting of non-certificated or paraprofessional employees. Within the paraprofessional chapter are those employees working as teachers aides, book-clerk treasurers, school nurses, and security officers. The Employer has for some time recognized this paraprofessional chapter of Local 420 as the exclusive representative of the non-certificated employees.

Should Local 420 be recognized as the exclusive bargaining representative of the secretarial employees, another paraprofessional chapter under the umbrella of Local 420 would be established. This chapter now recognized by the Board of Education. The secretarial chapter members would draft its own by-laws, rules, and regulations that pertain only to the members of their unit. The by-laws established by the secretaries would then be included in Local 420's Constitution. The paraprofessional chapter employees would be subject to Local 420's Constitution and by-laws applicable to all members, but would for the most part be governed by the by-laws established specifically for them. Although any laws promulgated or votes taken by the secretarial chapter are subject to approval by the executive board of Local 420, it is clear that the secretarial unit will not be dominated or controlled by the teacher members of the

professional chapter of Local 420. Only those members within the secretarial chapter are to be allowed to vote on issues which affect the members of their bargaining unit. The secretarial members would elect their own officers and establish a separate negotiating team to meet and confer with the representatives of the Employer.

A by-law of the existing paraprofessional chapter declares that a function of the chapter is to implement the decisions of the executive board of Local 420. Past history, however, demonstrates that the paraprofessional chapter employees have not been disciplined when the members have made decisions contrary to those of the executive board. Hence, the evidence shows that the paraprofessional unit is not strictly bound to implement the decisions of the teacher dominated, Local 420 executive board.

CONCLUSIONS OF LAW

The Employer contends Local 420's petition should be dismissed for a number of reasons. First, the Employer asserts that the petition is barred by the agreement between the Employer and the Association in effect for the 1979-1980 school year, ending on June 30, 1980. The Board concedes that an agreement between an employer and an incumbent union will make untimely any certification or decertification petition filed by another union unless that petition is filed during the thirty day period commencing on the 90th day and ending the 61st day preceding the termination of the agreement. Such a "contract bar" is recognized by this Board if an employer (1) meets, confers and discusses proposals concerning the customary terms and conditions of employment with the employee's bargaining representative; (2) reduces those discussions to writing; (3) presents such proposals to the appropriate governing body; and (4) the governing body adopts those proposals.

In this case it is clear that no contract bar exists because of the limited scope of the subject matter of the agreement between the Association and the Employer. If an

agreement is to serve as a contract bar the terms and conditions of employer governed by the agreement must be substantial. For example, in J.P. Sand and Gravel, 222 NLRB 83 (1976), the NLRB found that an agreement which pertained only to wages and fringe benefits was found that an agreement which pertained only to wages and fringe benefits was not sufficient to constitute a contract bar. The NLRB pointed out that there was no recognition clause nor any grievance procedure by which to govern problems arising in the course of the employment relationship. In the case at bar the employer-association agreement dealt only with wages, life insurance, sick leave and vacation benefits. There exists no recognition clause ascribing exclusive bargaining representative status to the Association. There is no reference to procedures for the resolution of grievances. In short, there exists only a general agreement concerning wages and certain fringe benefits. Consequently, the Board concludes that the agreement between the Employer and Association does not deal with matters "concerning the customary terms and conditions of employment" in a manner sufficient to constitute a contract bar. Accordingly, Local 420's petition must be considered timely.

The Employer contends that Local 420's petition should be dismissed because it would be "against the law and public policy of the State of Missouri for this Board to certify as an exclusive bargaining representative a labor organization the membership of which consists of teachers of Missouri schools." The Employer cites Public Case No. 79-020 which involved the same parties as those in the case at bar. In that case the Board held that it was against the law and the public policy of the State of Missouri to certify a bargaining unit which combines "teachers and non-teachers in the same unit." In Public Case No. 79-020 Local 420 refused to establish a separate entity that would represent the interests of the secretaries, independent and separate from the bargaining unit of teachers. This case is distinguishable from Public Case No. 79-020 in that by

establishing a paraprofessional chapter, separate from the teacher's bargaining unit, Local 420 has avoided the teacher-non-teacher combination which prevented the Board from recognizing the unit proposed in Public Case No. 79-020. The unit now proposed by Local 420 consists solely of non-teaching employees that elect their own officers, promulgate their own by-laws, and establish their own negotiating team.

The Employer contends that the proposed paraprofessional chapter will be totally dominated by the teacher members of Local 420's executive board. Although the members of the proposed chapter will be subject to Local 420's Constitution, and the paraprofessional chapter's decisions are subject to approval of the executive board, we do not consider such indirect control of the secretaries unit sufficient to deny Local 420 representative status. We must point out that only those members within the secretarial chapter are allowed to vote on issues which affect the members of their bargaining unit. Further, the secretarial chapter will establish a separate and distinct negotiating team --- without teacher members --- which will meet and confer with Employer representatives. We must assume at those meetings the parties will discuss only issues concerning the terms and conditions of employment of the secretaries and not those of the teachers. Consequently, there is little danger that the Board, by certifying Local 420, will indirectly certify a bargaining unit of teachers, prohibited by Section 105.510, RSMo 1978. In short, the Board concludes that the proposed paraprofessional chapter of secretaries is a bargaining unit separate from that of the Local 420 teacher's bargaining unit and as such may be certified by the Board.

The Employer has also moved to dismiss Local 420's petition because the secretarial employees of the paraprofessional unit have no community of interest with the teacher members of the professional chapter of Local 420, resulting in conflicts of interest between the two groups. As stated above, the Board considers the

paraprofessional chapter a separate bargaining unit. Consequently, the lack of a community of interest between the two groups is of no importance.

The final issue to be addressed concerns which of the workers employed as class code 00XX secretaries are to be included in the appropriate bargaining unit. The Employer and Local 420 agree that the employees listed in the petition share a community of interest necessary to constitute an appropriate bargaining unit. The Association presented no evidence relevant to the bargaining unit issue. Therefore, the Board recognizes those employees listed below as constituting an appropriate bargaining unit.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees of the St. Louis Board of Education is as follows: All office clerical employees in the Class Code 00XX employed by the St. Louis Board of Education excluding: Building Department Office Manager, Shops Division Office Manager, Food Service Division Office Manager, Administrative Control Supervisor, Secretaries to the Superintendent, Deputy Superintendent, Board of Education, Treasurer, Executive Director of Purchasing, Associates Superintendent-Personnel, Deputy Superintendent of Instruction, Deputy Superintendent for Management, Executive Director of Data Management Services, Assistant Superintendent for Governmental Relations, Executive Director-Financial Services, Assistant Deputy for Instruction, Associate Superintendent-Administrative Support Services, and to all Area Superintendents, Clerk Typist III's assigned to Purchasing Division, Food Services Division and Personnel Division, Clerk Typist II's assigned to the Budget Office and the Personnel Division, Clerk Typist I's assigned to the Personnel Division, Clerk III's assigned to the Budget Office and the Personnel Division, Personnel Statistician, Personnel Specialists, Personnel Associates,

Clerk Stenographer and Secretary I assigned to the Personnel Division, all CETA employees, all daily substitute clerks, and all Book Clerk Treasurers.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but no later than forty-five (45) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill or on vacation. Ineligible to vote are employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote on whether or not they desire to be represented by the American Federation of Teachers, Local 420, for purposes of discussions relative to wages, hours, and other terms and conditions of employment.

It is hereby further ordered that the respondent shall submit to the Chairman of the State Board of Mediation within seven (7) days from the date of receipt of this decision, an alphabetical list of names and addresses of the employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Signed this 15th day of October, 1980.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Robert Missey
Robert Missey, Employee Member

/s/ Herbert L. Shaw
Herbert Shaw, Employer Member